Consolidated
No. 43660-4-II
44504-2-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

In re Marriage of:

CHRISTOPHER ~~R~~ WODJA ,

Appellant,

v.

THERESA HARKENRIDER,

Respondent.

REPLY BRIEF OF APPELLANT

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Appellant Christopher P. Wodja makes the following reply to Respondent Theresa Harkenrider's responsive brief.

1. OBJECTIONS to inadmissible and misleading content

Appellant makes the following objections to testimony or other inadmissible content in the Respondent's brief.

(a) Page 3: Prejudicial "domestic violence" claim

The mother (Respondent) and her attorney write on page 3, in the last paragraph that Judge Nelson entered an order "setting forth the parameters for selecting Mr. Wodja's potential domestic violence...treatment providers..."

This is a specious misconstruction of the facts. At the trial court, the mother attempted to have me obtain post-dissolution domestic violence treatment. Judge Nelson specifically denied that request and ordered that there was no need for such treatment. CP 219. This is clear in the record and Respondent even recites this later in her facts. So, there is no factual, legitimate or legal reason for putting the supra quote in the mother's brief. It was done to prejudice this Appellant. Such tactics violate the Oath of Attorney in the Admission to Practice Rules 5(e), which reads:

> "7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause..."

(b) Page 7: Counsel's hypothetical testimony

On page 7, the mother relies upon trial court attorney Gina Auter's "testimony" in establishing facts in the "Statement of the Case" section. The mother tries to show that her attorney argued why the mother should have been awarded $500 for a hearing that the father prevailed in (regarding ownership of a vehicle). The attorney testified as to what would have happened if the father would have proposed an order or reached out to opposing counsel, rendering a hearing unnecessary. But, the record is replete with intense acrimony and the attorney's defiance to negotiate little to anything outside of court. The record gave the father no insight that a resolution could have occurred outside of court. Moreover, the mother's veteran attorney made NO OFFER to compromised, outside of court during any of the 8 days leading up to the motion.

Attorneys may not testify under RPC 3.7 and ER 602. The only person who had personal knowledge of my experience at the vehicle/vessel licensing department was me. And my testimony was laid out in the motion and my reply. CP 291 and 359. Moreover, the mother's attorney was ALREADY appearing in court that same day for her own motion. There was no inconvenience, unnecessary court action, or frivolousness and the court never

found any. That left the court with no way of awarding fees but to find "need and ability to pay", which the mother never tried to prove.

The only time negotiations were attempted on any matter was when Gina Auter tried to get me to sign off on a post-decree domestic violence provision that was never ordered by the court. See emails of Gina Auter trying to coerce me to surrender outside of court for this provision she lost on later. CP 368 – 373.

It is noteworthy that Ms. Auter withdrew on that day of the hearing (CP 372). She did this right after I pointed out egregious ethical problems, including the following (see CP 333, p.7 lines 18 – 23; p.12 lines 16 – 19; and p.11 line 25 – p.12, line 4):

(1) Ms. Auter lying to the court about losing her files

(2) her falsifying her client's signature electronically

(3) her misrepresenting court-appointed expert/professional Bill Kohlmeyer and forcing him to withdraw

(4) hyperbolizing my forgetfulness in the common mistake of failing to confirm a hearing, into some kind of abuse

(c) Mother's misplaced statements re change of circumstances and evidence "not proffered at trial"

The mother points out in her Statement of the Case on page 14 that Judge Nelson found no change of circumstances to grant the father contact with the children. The mother also complains on

this page that I presented evidence that predated the final order or was already presented at trial. This is a misplaced point/argument.

The post-decree hearings were NEW hearings to determine whether the father had COMPLIED WITH final order requirements and whether the mother should be court ordered to continue alcohol evaluations/ tests. The mother submitted current evidence regarding the issues as they were current. I submitted evidence to show my current compliance with court orders. BOTH PARTIES referenced materials related to the original orders.

The mother's complaint is yet another specious and misplaced one. This was not a modification action. This was the COURT'S OWN court-ordered reviews. If it was a modification action, then the court could not "drop" the mother's UA provision.

It goes without saying that the pre-decree evidence submitted to the trial court was necessary for the court to make a decision on post-decree review hearings that the court ordered.

(d) Attorney Barbara McInvaille's unnecessary testimony

On page 15, the mother's attorney inappropriately testifies:

> "The procedural history that culminated...is extremely convoluted, perhaps deliberately, by Mr. Wodja."

Attorneys may not testify. ER 602 and RPC 3.7. The mother's legal

team is not satisfied with simply citing the record. They egregiously continually testify with statements like the supra quote which obviously have no purpose other than to prejudice me, instead of letting the facts and findings speak for their arguments. This is part of my appeal: that much of the "evidence" that Judge Nelson relied upon was inadmissible testimony by the mother and her attorney(s) in violation of ER 602 and RPC 3.7 for the attorneys. No one can testify to my "state of mind" except for an expert under ER 702.

2. Misplaced argument that my brief makes "unrelated" arguments and past the deadline

On page 17, the mother argues that I don't argue anything related to specific issues and that my appeals are untimely and only appeal the reconsideration motions.

Again, the issues before the court were post-decree matters that the court set up. The court never stated, "This motion is not permitted because it is post-decree". The mother never appealed any of the hearings. In fact, she SET some of the hearings herself. Reconsideration incorporates the findings and/or rulings of the orders that were being reconsidered. If the mother and her attorney believe that this appeal is untimely, they should have sought a Motion to Dismiss. They don't believe their own argument.

An appeal is timely if it filed within 30 days of an order on reconsideration. King County v. Williamson, 66 Wn. App. 10, 830 P.2d 392 (1992).

Buckner v. Berkey, 89 Wn. App. 906, 911-912, 951 P.2d 338 (1996) reads as follows, in pertinent part:

> "...RAP 5.2(a) and RAP 5.2(e) permit the notice of appeal of a judgment to be filed within 30 days of an order deciding certain timely motions. These motions are expressly limited to a...a motion for reconsideration or new trial under CR 59..."

The RAPs are designed to allow some flexibility in order to avoid harsh results. Weeks v. WSP, 96 Wn.2d 893, 895-96, 639 P.2d 732 (1982). The Supreme Court and Court of Appeals have affirmed/reversed lower court decisions that were tolled further, due to second and EVEN THIRD Motion for Reconsideration. In re York, 44 Wn. App. 547, 723 P.2d 448 (1986); JMOA v. Plateau 44 II, LLC, 139 Wn. App. 743, 162 P.3d 1153 (2007); Tiberino v. Prosecuting Attorney, 103 Wn. App. 680, 13 P.3d 1104 (2000); State v. Duncan, 111 Wn.2d 859, 765 P.2d 1300 (1989).

The appellate courts in the following non-published cases also granted relief on appeal, EVEN THOUGH the cases were "dragged out" by second and third Motions for Reconsideration: 54792-5-I, 30244-0-III, 50422-3-I, 49763-4-I, 53734-2-I.

3. Section II A – misplaced argument re jurisdiction

The mother ERRANTLY claims that I am arguing that Judge Nelson cannot take jurisdiction as she did after TRIAL. There should be no confusion here. I am specifically appealing the September 12, 2012 order in which Judge Nelson stated:

> "The court continues jurisdiction over the children and the parties **until the children are emancipated**."
>
> --CP 96, page 2, footnote #2

This is a blatant abuse of discretion. I already cited authorities in my Brief of Appellant that judges may "retain responsibility for subsequent matters" But, a trial judge may not retain ***exclusive*** jurisdiction over ***parties***. I timely filed a Motion for Reconsideration on September 24, 2012 (the order was entered on a Wednesday and day #10 landed on a Saturday, giving me until 9/12/2012 on Monday). I addressed this jurisdiction issue in that motion. CP 104 (see p.2, lines 9 – 11 and page 14, section #13).

The court granted and denied relief to me on the 9/24/2012 motion for reconsideration. See October 12, 2012 order. CP 148.

On October 22, 2012, I filed a second reconsideration (of the 10/12/2012 order). The objection to "taking permanent jurisdiction" was once again made under CR 59. See CP 515, p. 2 lines 21-23.

On November 29, 2012, the court finally ruled by letter to the parties and denied the right to any hearing. CP 161.

December 29, 2012 landed on a Saturday. I timely filed a Notice of Appeal on December 31, 2012, a Monday.

Civil Rule 6(a) reads in pertinent part:

> "...In computing any period of time prescribed or allowed by these rules...The last day of the period so computed shall be included, unless it is a Saturday...in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday...."

The mother desperately misdirects the court's attention to PREVIOUS orders regarding jurisdiction. The order I am appeal herein goes far beyond what the court exercised in previous orders. The court ordered that the court has personal jurisdiction over the PARTIES and the CHILDREN until the children are 18, even though they live in another state. The court cannot do that. The mother is intransigent by opposing me on this clear reversible error.

4. Section II B "Substantial Evidence...Supports...No Need for...Random UA Testing"

(a) The appeal was timely

The mother argues that my appeal of the 4/27/2012 post-decree order is untimely. Once again, the mother **ignores the fact** that I filed a timely Motion for Reconsideration on May 7, 2012. CP 184. As I pointed out above, this extends the time for appeal until

an Order on Reconsideration is entered. On June 8, 2012, Judge Nelson ruled on this reconsideration. CP 323. Before the reconsideration was heard, the father submitted declarations from experts who analyzed the mother's UA tests and an expert was ready at available to testify in court on 6/8/2012. CP 248, 264, 266.

As the mother concedes in her argument, I filed a Notice of Appeal on July 7, 2012. The mother's errant, specious, misplaced arguments regarding timeliness are frivolous and meant to prejudice. Given her detailed account in her Statement of the Case, she is knowingly trying to mislead this court about timeliness, instead of simply arguing merits. Everything has been filed on time.

(b) Respondent's flippant dismissal of experts

The mother argues that the "experts" ONLY saw limited written records or data presented by this Appellant and that experts didn't talk to Ms. Harkenrider directly. But, NEITHER did the judge.

By the mother's own admission, if the experts were under-informed or misinformed, then so was the court. This goes directly to what I am saying. Judge Nelson refused to consider what the experts said regarding the record and Judge Nelson made her own "expert opinion" on the record.

Moreover, why did Judge Nelson NOT question or allow

testimony from the expert who was available in open court that day of the hearing? Why would she relieve the mother of UA's solely based upon the mother's own testimony? No rational judge would have done this. Judge Nelson was egregiously biased for the mother and against the father in that she did not want to hear anything anyone had to say "against" the mother. So, Judge Nelson allowed NO ACCESS to her courtroom for anyone who might contradict the mother's contentions.

The court relied upon Dr. Whitehill and an alcohol expert at trial to make findings. CP 28. Then when it came time to evaluate the mother's alcohol UA tests, the court relied upon NO EVIDENCE from experts—she only relied on the mother's own statement. All of a sudden felt that there was no concern whatsoever about the mother's alcohol problems that she had in the past. The mother's inconsistent UA's or skipping of UA's were of no concern.

No rational judge would ONLY hear from the party who wants to "get out of" court-ordered UA's.

Of course, the trial court may determine the credibility of experts. But, the court did not consider them at all. Nor did the court want to even attempt to hear from one who was available at the hearing. This Appellant gave Judge Nelson due notice that live

expert testimony was available and requested such. CP 234.

How could Judge Nelson disregard such an opportunity? How could she be comfortable with her own personal non-expert ability to analyze UA data, charts and numbers? She had her mind made up to rule in the mother's favor out of a disconcerting bias.

The mother speciously and hypocritically brings up the Findings and Conclusions of trial, at this time (which is well after trial). The mother tries to project these findings of 6 months earlier onto the June 8 hearing. To wit, the mother tries to somehow assert that the expert witnesses have no credibility because of a finding of the Appellant "must have skewed the results" BEFORE trial. That finding has no bearing on the NEW ISSUE at hand (which was heard on June 8). The issue now is that Judge Nelson did not consider experts. The mother brought no experts to court to analyze the UA data and Judge Nelson is NOT a UA analysis expert, so there was insufficient evidence/testimony to conclude that the mother all-of-a-sudden has no problems with alcohol.

(c) Use of Quinn case does not preclude this court from using substantial evidence standard

The mother's application of Quinn v. Cherry Lane Auto Plaza, Inc., 153 Wn.App. 710, 717, 225 P.3d 266 (2009) does NOT

prohibit this court from using the substantial evidence standard. Quinn actually distinguishes substantial evidence vs. credibility of experts. Quinn at 717 says:

> "It is one thing for an appellate court to review whether sufficient evidence supports a trial court's factual determination."

But, in Quinn, the trial court made "exhaustive findings". In this case, Judge Nelson simply said there's no concern. That's it. The 4/27/2012 order "relieved" the mother from taking UA's. CP 182. Upon reconsideration on 6/8/2012, the court simply said, "The court remains satisfied." CP 383. That's it. No substantial evidence. No detailed findings that the experts are not credible (so credibility is a non-issue). The court simply did not hear experts. The court made no reference to ANY evidence relied upon. How can the court discern the UA's that the mother was court ordered to take, unless a chemical dependency expert analyze them? ER 702. The court relied on an experts at trial to implement the UAs. Why now is there a flippant, vague dismissal of the mother's obligation to continue UA's or get help when ALL EXPERTS before the court testified that the mother's results were disconcerting?

Yes, the trial court can make findings of facts and conclusions, based upon evidence. But, Judge Nelson made

findings favorable to the mother with NO EVIDENCE supporting a favorable finding other than the mother's own testimony which is grossly contradictory (the mother stated that Dr. Whitehill was reliable but attacked his recommendation for father/child contact, and Dr. Whitehill's deference to Paula van Pul).

The Quinn court relied upon State v. Smith, 31 Wn. App. 226, 640 P.2d 25 (1982) to hold that the Court of Appeals cannot disturb findings of the trial court on credibility determinations. But, again, Judge Nelson was SILENT on whether the experts were credible or not. She simply ignored them and/or would not let them testify.

And now, the substantial evidence standard is allowed for this court to attack the trial court's findings. Smith states:

> "HN1...Sufficiency of Evidence...In determining whether evidence is sufficient to support a conviction, the appellate court views the evidence most favorably toward the State and decides whether any rational trier of fact could have found guilty by a reasonable doubt."

In this instant case, the Court of Appeals must start with the assumption that Judge Nelson had good cause to excuse the UA requirement after there was a decree finding of an alcohol problem.

But, there is NO EVIDENCE to support this. And NO rational trier of fact would come to these conclusions—this is the problem with all of Judge Nelson's rulings in this appeal. Since

there's no evidence, Judge Nelson made up her own facts.

This very Division Two once held, "When a {court} engages in off-the-record fact gathering, {it} essentially has ***become a witness*** in the case." Wells v. Wells, No. 29849-0-II, Div. 2 Court of Appeals (filed 7/20/2004), citing Lillie v. United States, 953 F.2d 1188, 1191 (10th Cir. 1992).

(d) State v. Benn and expert testimony

The mother cites State v. Benn, 120 Wn.2d 631, 662, 845 P.2d 289 (1993) to justify Judge Nelson's disregard of expert testimony. There are several reasons why this point is inapposite. For one, Judge Nelson did not even consider expert testimony. She did not make a finding of a lack of credibility. Judge Nelson relied upon her own opinion and analysis were expert testimony is required under ER 702. Also, in Benn, an expert witness' testimony did not apply to the legal issue at hand ("competence" was not the same thing as "ability to choose a trial strategy"). The Benn expert did not analyze competence under an established public policy outlined by the Supreme Court. Two other experts were called upon to testify in Benn, also. There was contradictory testimony.

But, in this case herein, there was NO OTHER expert testimony than that which incriminated the mother as having severe

alcohol problems. The court did not have contradictory testimony to decipher through. Instead, the trial court IGNORED and/or REFUSED to hear ANY expert testimony.

In the Benn case, "the **court requested** evaluations of the defendant from **three different** psychologists..."

Judge Nelson should have used the same wisdom, or common sense, as the Benn court. But, she did **not** request expert testimony. She did **not** even question the highly qualified and decorated expert that was available at the June 8 hearing. CP 234.

If this court affirms Judge Nelson's ruling with the UAs and agrees with the mother's argument then this court is saying:

> "All decorated experts (even though they are often used by Pierce County courts) are automatically deemed to have no credibility and are incompetent when they ever testify favorable to Christopher's Wodja position."

This is what is disturbing about this case. Judge Nelson RULES AGAINST ANY position, evidence or witnesses (even ITS OWN COURT APPOINTED experts) if they favor the father. That is more than just a mere coincidence. It is an egregious bias.

5. Section II C – the May 11, 2012 order

This order required further anger management work with Appellant and to start over from the beginning even though Bill Notarfrancisco had completed 99% of his treatment and was

disqualified after he chose to do his work the way he always does his work (evaluate first, look at the record second). CP 408.

The only reason this expert was not allowed to "do his job" in the way that he saw fit as an expert was because the non-expert Judge Nelson agreed with the non-expert, Attorney Gina Auter's opinion as to how Bill Notarfrancisco should have done his job.

This 5/11/12 ruling (a continuation and affirmation of Notarfrancisco's dismissal) was an abuse of discretion, with the court making itself out to be the expert and tell experts how to do their jobs, as if the court was somehow an expert of the experts.

It is obvious that I am appealing the "starting from scratch" anger management, as I had contested it throughout the record.

6. Section II D – Attorney fee award of June 8

Again, the findings supporting the attorney fee award are findings and conclusions that no rational judge would ever make. First and foremost, Judge Nelson did something that was likely never done in the history of family court in the State of Washington. She made a mind-reading determination of my state of mind in violation of ER 602 and 605 that I "strategically failed to confirm" a hearing. Why would I possibly do that and delay the relief that I requested? Is an attorney's failure to confirm ever deemed an

intentional legal strategy? This finding is not rational. It is rather absurd and bizarre that Judge Nelson would have the audacity to pretend that she could read the Appellant's mind. This alone is grounds to reverse that decision.

I had tried for weeks and weeks to get Diane Shepard appointed after such an appointment was delayed. I completed 99% of treatment with Notarfrancisco. Why would I intentionally delay the appointment of Diane Shepard? The record shows that I sought getting her appointment. Notarfrancisco was dismissed on March 16, 2012. I moved the court on May 18, 2012 to appoint Diane Shepard. Up to that point, there was a 2-month delay in getting anyone appointed. And Judge Nelson held that I intentionally delayed my own hearing by failing to confirm on purpose. To what end?

Here I am seeking a reversal of the court's decision, denying me access to the children. I have demonstrated a desire to be in the children's lives. No reasonable rationale judge would find that I intentionally delayed this end that I am still obviously seeking.

7. Section II E – attorney fee award standards

The finding of intransigence is being attacked on appeal. It was untenable and unreasonable, as is the standard for a reversal

(already cited by the mother in Mattson). The mother stops and only cites one sentence in Mattson at page 604. She should have also pointed out another sentence in the same paragraph:

> "BUT, GENERALLY the court MUST balance the needs of the party requesting the fees against the ability of the opposing party to pay the fees. Crosetto, 82 Wn. App. At 563 (citing Knight, 75 Wn. App. At 729)."

Noteworthy in Mattson is that the Court of Appeals held that the husband's "resources substantially exceeded" the wife's and the wife "demonstrated her financial need." Id.

The mother in this case never even attempted the Mattson standard. Applying Mattson, this court should reverse.

Judge Nelson awarded fees at a whim, even when I prevailed. Her rulings were based on a bias for the mother, to an egregiously disconcerting extent. The times that intransigence was found, those findings were based upon INADMISSIBLE evidence, and no substantial evidence (mother's testimony of my state of mind, my intents and my legal strategy and other things she did not have any personal knowledge of, per ER 602).

Moreover, the Knight case (cited in Mattson), relied on In re Marriage of Sanborn, 55 Wn. App. 124, 130, 777 P.2d 4 (1989) when holding:

> "The trial court MUST INDICATE on the record the method it used to calculate the award."

Judge Nelson never did so. This alone is reversible error. Her disregard for this public policy and all other maxims mentioned in my brief, is indicative of her bias and prejudice against me throughout all of the proceedings, which call into question the veracity and validity of any of Judge Nelson's rulings. All of this affects my Constitutional right to a fair hearing.

Under the "appearance of fairness doctrine", a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing. State v. Bilal, 77 Wn. App. 720, 893 P.2d 674, review denied, 127 Wn.2d 103, 902 P.2d 163 (1995). The right to a fair hearing under the federal due process clause prohibits actual bias and " 'the probability of unfairness.' " In re Marriage of Meredith, 148 Wn. App. 887, 903, 201 P.3d 1056, (2009). "Under the appearance of fairness doctrine, a judicial proceeding **is valid only if** a reasonably prudent and disinterested person would conclude that **all parties** obtained a fair, impartial, and neutral hearing." Id. Like the protections of due process, Washington's appearance of fairness doctrine seeks to prevent the

problem of a biased or potentially interested judge. State v. Carter, 77 Wn. App. 8, 12, 888 P.2d 1230 (1995). Under this doctrine, evidence of a judge's actual bias is not required; it is enough to present evidence of a judge's actual **or POTENTIAL bias**. State v. Post, 118 Wn.2d 596, 619 n.9, 826 P.2d 172, 837 P.2d 599 (1992).

The CJC recognizes that where a trial judge's decisions are tainted by **even a mere SUSPICION** of partiality, the effect on the public's confidence in our judicial system can be debilitating.? Sherman v. State, 128 Wn.2d 164, 205, 905 P.2d 355 (1995).

When making its findings of intransigence and multiple awards of attorney fees, Judge Nelson ascribed an astounding amount of power and control to this pro se that is not even close to that of the litigious abusers of the process in Yurtis and Giordano (cases cited in my Brief of Appellant).

If I brought "excessive motions" as the mother claims on page 25 in her citation of Kelly, then she should have also been found to be intransigent for the post decree motions she brought.

8. Section II F – June 15, 2012 hearing unnecessary

This entire argument is premised upon Attorney Gina Auter's testimony about what would have hypothetically happened if the

father would have hypothetically presented an order (Ms. Auter hypothetically would have been completely compliant and amiable to the father's request). Nothing in the record suggest this. Ms. Auter cannot testify. Ms. Auter made no attempt to resolve the matter out of court. Even if she did, ER 408 and ER 802 prevent the court from even considering such matters.

Moreover and MOST IMPORTANTLY, Judge Nelson made no findings whatsoever as to whether this was the reason she awarded attorney fees. In fact, she made no findings at all. That alone is a basis for reversal.

Even if Gina Auter's testimony could have been considered, Ms. Auter has a lack of credibility problem, since she outright lied about a court-appointed expert, forcing him to withdraw from his appointment (so Ms. Auter's conduct caused delay in me getting court-appointed treatments, which contradicts the mother's argument that she is somehow a victim of litigation games).

Moreover, Ms. Auter quit right after I called her out for falsifying her client's signature with an electronic one.

9. Section II G – Judge Nelson's order requiring Wodja to seek permission to bring any motion

Judge Nelson restricted my access to the court by requiring

me to get the court's permission to file any motions. The mother attempts to substantiate this ruling by citing Judge Nelson's over the top findings of vexatious litigation and her mind-reading of my state of mind. I challenge such findings in my Brief and elsewhere in this Reply Brief. I must comment, again, that no reasonable judge would consistently rule so harshly and severely against me at EVERY SINGLE hearing on every single issue and sanction so harshly, as if I was a Yurtis or Girodano type of litigant (filing multiple actions, under different cause numbers, in all appellate courts and re-litigating already settled issues beyond deadlines).

10. Section II H – alleged failure to appeal 6/22/2012 order

The challenge to the findings in this order are under the overall challenge to all of Judge Nelson's rulings: (1) that no substantial evidence supports the findings that I delayed the Diane Shepard appointment, and (2) that Judge Nelson cannot read my mind and testify that I intentionally failed to confirm a hearing, (3) that Judge Nelson's rulings are patently prejudicial and biased, (4) the over the top projection of blame upon Wodja for every negative thing in this case further underscores this bias.

11. Section II I – Failure to establish adequate cause

Again, these matters were review hearings and/or court ordered hearings to give me opportunity to increase my visitation and/or a direct result of post-decree actions of the mother.

If this argument of the mother prevails then ALL POST DECREE orders must be reversed and vacated because they all modified the parenting plan, by appointing different named experts and granting extra relief to the mother WITHOUT a showing of adequate cause.

Page 33 of the response brief contains EVEN MORE attorney testimony on appeal that is not admissible under ER 602, 702 and RPC 3.7. The mother's attorney "testifies" as follows:

> "Mr. Wodja also presented declaration from other providers **who had clearly not been furnished with the full and truthful factual background** necessary to formulate an accurate understanding of the circumstance as well as an appropriate course of mental health treatment for Mr. Wodja."

The mother's attorney is inserting her "expert testimony" and/or judgment as to what experts may know, understand and ascertain in this, or any other, family law case. Moreover, she testifies that she knows what records they saw. All the experts were given my LINX account and password. They had access to everything the attorneys, parties and judge accessed.

So, is the appellant attorney now the one who determines the abilities of mental health experts to appropriately recommend treatment? Does this appellant attorney (who just came on board for this appeal) now know what such witnesses should have or could have known? Should the trial courts, from here on out, use Attorney Barbara McInvaille to verify the credibility and accuracy of mental health experts' investigations, evaluations, reporting and recommendations? Should she now be the expert who validates their reports and work product? These questions show how absurd this attorney's testimony is (a running theme in this case).

12. Section II J – Order on Reconsideration of 9/12/12

My relief requested regarding the 9/12/2012 Order on Reconsideration should be granted for the same reasons argued in my Brief and elsewhere herein.

13. Section II K – the mother is not entitled to fees on appeal

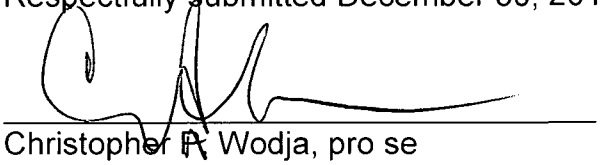
There is nothing frivolous about this appeal. There are multiple debatable issues. There is an AUTOMATIC REVERSAL regarding Judge Nelson overstepping and abusing her authority and taking jurisdiction over the Massachusetts residents (the children and mother) and this Appellant until the children are age 18. This reversible error alone gives merit to this appeal.

The other issues that are debatable include the fact that the court repeatedly admitted, heard and SOLELY relied upon the testimony of the mother who lives on the East Coast and who cannot possible have any personal knowledge of anything she testified to (under ER 602) regarding anything that went on in court, in Washington State or in my mind.

Every single court-appointed expert witness and other experts who had anything good to say about Appellant and/or anything negative to say about the Respondent mother, they were completely disregarded by the court or not even heard. The court substituted its own novice opinion for that of experts. Judge Nelson actually testified and/or made up her own facts that were not testified to by anyone with personal knowledge. This disturbing M.O. of the court throughout this case makes for a debatable issue.

It is a frivolous, desperate claim to attack my appeal as merit-less.

Respectfully submitted December 30, 2013.



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DECLARATION OF SERVICE

I declare that on December 30, 2013, at 2:00 a.m./ p.m., I delivered a true copy of my Reply Brief of Appellant to Respondent's attorney of record at the following address:

Helland Law Group
960 Market Street
Tacoma, WA 98402-3605

Service was accomplished by:

[✓] handing the document to the receptionist in charge of office at said address.

[ ] placing the document into the hand of Attorney Barbara McInvaille.

[ ] leaving the document in a conspicuous place at address above, pursuant to Civil Rule 5(b)(1)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Tacoma, Washington on December 30, 2013.

Christopher R. Wodja, pro se
Appellant